



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,716	01/02/2001	Francois Cottard	05725.0825-00	1011

22852 7590 09/09/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
1300 I STREET, NW
WASHINGTON, DC 20005

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
----------	--------------

1751

DATE MAILED: 09/09/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,716

Applicant(s)

COTTARD ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s) _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1 This action is responsive to the response filed on June 18, 2003.

2 The rejection of claims 20 and 26 under 35 U.S.C. 112, 2nd paragraph, is withdrawn because of the applicant's clarification.

3 The rejection of claims 1-16, 20-52 and 54-88 under 35 103(a) as being unpatentable over Lagrange et al. (US 5,984,975) in view of de la Mettrie et al. (US 5,976,195), is maintained for the reasons set forth in the office action in paper No. 8, dated 12/19/2002.

4 The rejection of claims 17-19 under 35 103(a) as being unpatentable over Lagrange et al. (US 5,984,975) in view of de la Mettrie et al. (US 5,976,195) and further, in view of de la Mettire et al. (US 5,989,295), is maintained for the reasons set forth in the office action in paper No. 8, dated 12/19/2002.

5 The rejection of claims 17-19 under 35 103(a) as being unpatentable over Lagrange et al. (US 5,984,975) in view of de la Mettrie et al. (US 5,976,195) and de la Mettire et al. (US 5,989,295) and further in view of Samain et al. (US 5,538,517), is maintained for the reasons set forth in the office action in paper No. 8, dated 12/19/2002.

Response to Applicant's Arguments

6 Applicant's arguments filed 6/18/03 have been fully considered but they are not persuasive.

With respect to the rejection based upon Lagrange (US' 975) in view of de la Mettrie (US 195), Applicant argues that there is no motivation to combine the references.

The examiner respectfully disagrees with the above arguments because Lagrange (US' 975) as a primary reference teaches a hair dyeing composition comprising oxidation bases (see

Art Unit: 1751

col. 1 lines 50-65) and thickening polymers of acrylic acid (see col. 10, lines 56-64). The secondary reference of de la Mettire (US' 195) in analogous art of hair dyeing compositions, teaches a composition comprising oxidation bases and thickening polymers of acrylic acid, methacrylic acid or mixture and whose ally ether unit containing at least one fatty chain as claimed (see col. 3, lines 27-38). Therefore, it would have been obvious to one having ordinary skill in the art to be motivated to modify the primary reference of Lagrange by replacing the polymeric thickener of acrylic acid with the thickening polymers of acrylic acid and methacrylic acid that has an ally ether unit containing at least one fatty chain as taught by de la Mettire (US' 195) with a reasonable expectation of success in obtaining more chromic (more luminous) shade (see col. 1, lines 53-58).

With respect to the argument that de la Mettire (US' 195) teaches away from the present invention by disclosing the comparative Example 2 and reduce the consumption of the surfactants in the composition, the examiner out like to point out that de la Mettire (US' 195) suggest the use of a mixture of surfactants in the dyeing composition includes the nonionic surfactants (see col. 8, lines 1-7). Further, in the comparative Example 2, the reference teaches the replacement of the polymers with nonionic surfactants and does not negate the presence of polymers with the nonionic surfactants in the same dyeing composition.

With respect to the rejection based upon Lagrange (US' 975) in view of de la Mettrie (US' 195) and further, in view of de la Mettire (US' 295), Applicant argues that there is no motivation to combine the references.

The examiner respectfully, disagrees with the above argument for the same reasons as stated above.

Art Unit: 1751

With respect to the rejection based upon Lagrange (US' 975) in view of de la Mettrie (US' 195) and de la Mettire (US' 295) and further, in view of Samain (US' 517), Applicant argues that there is no motivation to combine the references.

The examiner respectfully disagrees with the above argument because Lagrange (US' 975), de la Mettire (US' 195) and de la Mettire (US' 295) as analogous art teach hair dyeing compositions comprising oxidation bases includes heterocyclic compounds (see US' 975, col. 6, lines 23-27, US' 195, col. 6, lines 20-48 and US' 295, col. 7, lines 36-62) and hydrogen peroxide as an oxidizing agent and Samain (US' 517) in other analogous art of hair dyeing composition teaches a composition comprising oxidation bases, hydrogen peroxide as an oxidizing agent or peroxidase as an enzymatic source of hydrogen peroxide (see col. 2, lines 20-39). Therefore, it would have been obvious to one having ordinary skill in the art to be motivated to modify the composition of the Lagrange, de la Mettire (US' 195) and de la Mettire (US' 295) by replacing hydrogen peroxide with the peroxidase as taught by Samian because the reference of Samain teaches the equivalence between hydrogen peroxide and peroxidase and further, the reference teaches that peroxidase enzyme is used to generate hydrogen peroxide in the composition. Therefore, the prima facie case of obviousness has been established.

7 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 1751

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Elhilo

August 26, 2003


YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700